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Filed
10 April 23 P4:03
Gary Fitzsimmons
District Clerk
Dallas District

CAUSE NO. DC-10-04917

BURNETT MCKINNEY, JR. AND	§	IN THE DISTRICT COURT
ALEXANDRIA MCKINNEY,	§	
BOTH INDIVIDUALLY AND ON BEHALF	§	
OF THE ESTATE OF	§	
BURNETT MCKINNEY,	§	
III; BYRON FULLER AND	§	
ALEXANDRIA MCKINNEY,	§	
BOTH INDIVIDUALLY AND ON BEHALF	§	
OF THE ESTATE OF	§	
TREVION MCKINNEY;	§	
AND SASHA ANDERSON AND	§	
LEE BLEVINS, BOTH INDIVIDUALLY	§	
AND ON BEHALF OF	§	
THE ESTATE OF CHASHAWNA BLEVINS	§	
	§	
Plaintiffs	§	
	§	
v.	§	OF DALLAS COUNTY, TEXAS
	§	
DYNAMIC ENVIRONMENTAL SERVICES,	§	
LLC.; ROBBIE THOMPSON; AND	§	
CHASHAWNA BLEVINS	§	
	§	
Defendants.	§	
	§ I-162	JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Burnett McKinney Jr. and Alexandria McKinney, both individually and on behalf of the Estate of Burnett McKinney, III; Byron Fuller and Alexandria McKinney, both individually and on behalf of the Estate of Tre'Vion McKinney; and Sasha Anderson and Lee Blevins, both individually and on behalf of the Estate of Chashawna Blevins respectfully file this Petition complaining of the above-referenced Defendants and seeking recovery to the full extent applicable by law under the Texas Wrongful Death Statute, TEX. CIV. PRAC. & REM. CODE § 71.001, et seq., the Texas Survival Statute, TEX. CIV. PRAC. & REM. CODE § 71.021, and all other applicable laws. Plaintiffs complain of the various acts listed below and for their wrongful death and survival causes of action which would show the Court and Jury as follows:

I. DISCOVERY CONTROL PLAN

Plaintiffs intend to conduct discovery under Level 3 in accordance with Texas Rule of Civil Procedure 190.

II. PARTIES

Plaintiffs are the only heirs of Decedent, there is no legal representative and none is required.

Plaintiffs bring this cause of action in their capacity as the Decedent's only heirs and legal representatives. Plaintiffs are all beneficiaries entitled to bring this action pursuant to Section 71.004 of T.R.C.P.

Robbie Thompson (hereinafter referred to as "Defendant" and "Defendant Star") is an individual that may be served at 2822 HWY 80, Morton, MS, 39117.

Dynamic Environmental Services, LLC (hereinafter referred to as "Defendant" and "Defendant Evans") is a corporation that may be served through its registered agents, Brent Upton at 6260 HWY 73, Geismer, LA, 70734.

Chashawna Blevins' interests reside in Dallas County, Texas and have accepted service through Kelley|Witherspoon, LLP at 2614 Main, Dallas, Texas 75226.

All Defendants are collective referred to as "Defendants."

III. JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this Court.

Venue in Dallas County is proper in this cause under the TEX. CIV. PRAC. & REM. CODE because Plaintiff and co-Defendant Chashawna Blevins was a resident of Dallas County, Texas.

IV. FACTS

On March 27, 2010, at around 4:18 a.m., Chashawna Blevins, Burnett McKinney III and Tre'Vion McKinney, were involved in a fatal collision in Tyler, Texas on westbound Interstate 20 near the 573 mile marker in Smith County. At or around 4:18 a.m., a semi tractor-trailer owned and operated by Defendant Dynamic Environmental Services, LLC was towing or pulling a box trailer owned and operated by Defendant Dynamic Environmental Services, LLC; the vehicles were being operated or driven by Defendants' employee, Robbie Thompson, who recklessly collided into the rear of Ms. Blevins' vehicle, forcing the vehicle to strike the concrete barrier. After the initial collision our client's vehicle was flipped sideways facing north and resting underneath the semi tractor-trailor operated by Defendants' employee, Robbie Thompson. Due to Defendants' negligence, Chashawna Blevins and Tre'Vion McKinney were pronounced dead at the scene by Smith County Precinct 4 Justice of the Peace Mitch Shamburger, while Burnett McKinney III were transported to East Texas Medical Center where he died a few hours later due to injuries sustained as a result of the impact.

The investigation of the accident indicates that the primary causal factor for the incident occurred because Defendants' employee, Robbie Thompson, failed to notice Ms. Blevins' vehicle which was noticeably stalled in the inside lane, failed to avoid the vehicle and failed to brake at an appropriate time and distance resulting in a high impact collision with Ms. Blevins' vehicle. In addition, the evidence indicates Defendants' vehicle was traveling at a speed of at least 75 mph in a 65 mph speed zone.

V. NEGLIGENCE

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein. Defendants had a duty to exercise the degree of care that a reasonable person would use to avoid harm to

others under circumstances similar to those described herein. Plaintiffs' injuries were proximately caused by Defendants' negligent, careless and reckless disregard of said duty.

The negligent, careless and reckless disregard of duty of the Defendants include the following acts and omissions:

a. Failing to keep such lookout as a person of ordinary prudence would have kept under the same or similar circumstances.

b. Failing to apply brakes to their vehicle in a timely manner to avoid the collision in question.

c. Failing to apply the brakes to their vehicle to avoid the collision in question.

d. Failing to drive their vehicles at a rate of speed that was greater than that which an ordinarily prudent person would have driven under the same or similar circumstances.

e. Failing to avoid the collision in question.

f. In failing to stop, yield, and grant the privilege of immediate use of the intersection in obedience to a stop sign erected by public authority.

g. Failing to control speed.

h. Failing to be properly attentive.

i. Failing to take proper evasive action.

Each of these acts and omissions, singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this action and Plaintiffs' injuries and damages.

VI. RES IPSA LOQUITUR

Additionally, and in the alternative, Defendants are liable to Plaintiffs for the damages resulting from the wrongful death of Chashawna Blevins, Burnett McKinney III and Tre'Vion

McKinney under the theory of *res ipsa loquitur*. The death of the Plaintiff was caused by an instrumentality within the exclusive control, management and supervision of Defendants and their agents, servants, and employees.

Plaintiffs would further show that an occurrence such as this does not ordinarily happen unless the persons or entities in control fail to exercise that degree of ordinary care to which Plaintiffs and Chashawna Blevins, Burnett McKinney III and Tre'Vion McKinney were entitled to expect. This raises a legal inference that the Defendants, through their agents, servants, or employees, failed to exercise ordinary care under the circumstances, entitling the jury to conclude that Defendants, their agents, servants, or employees were, in fact, negligent, and Plaintiffs therefore relies upon the legal doctrine of *res ipsa loquitur*, meaning "the thing speaks for itself."

Further, Defendants should be required to come forward, and try to disprove, if they can, their failure to exercise ordinary care herein. All of the foregoing conduct, both of omission and commission, on the part of Defendants, constituted proximate causes of the injuries and damages to Plaintiffs herein, for which Defendants are jointly and severally liable.

VII. NEGLIGENCE ENTRUSTMENT

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein. On the date of the incident in dispute, Defendants were the owners and/or operators of the vehicle driven by Robbie Thompson.

Defendants entrusted the vehicle to Robbie Thompson, a reckless and incompetent driver. Defendants knew, or through the exercise of reasonable care should have known, that Robbie Thompson was a reckless and incompetent driver, and unlicensed in the United States. As

described herein, Robbie Thompson was negligent on the occasion in question. Further, Robbie Thompson's negligence was the proximate cause of Plaintiffs' damages.

Said Defendants knew, or in the exercise of due care should have known, that its employee was an incompetent and unfit driver and would create an unreasonable risk of danger to persons, passengers, and property on the public streets and highways of Texas, in that Defendants' employee was incompetent at the time of the entrustment as alleged above.

VIII. WRONGFUL DEATH

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.002(b), 71.004(b), 71.009, and 71.010, Plaintiffs are entitled to recover from Defendants the actual damages attributable to the wrongful death of Decedent. Plaintiffs are also entitled to recover mental anguish damages. Further, because Defendants' acts and omissions resulted from gross negligence, exemplary damages should be awarded against Defendants in an amount to be determined by the jury in this case.

IX. SURVIVAL

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

Pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021, this action for the injuries sustained by Decedent survives his death. This statute permits Plaintiffs (in their capacity as heirs) to prosecute and recover compensatory and exemplary damages for the claims set forth above.

Accordingly, Plaintiffs seek such damages under TEX. CIV. PRAC. & REM. CODE § 71.021.

X. GROSS NEGLIGENCE

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein. Defendants' acts or omissions described above, when viewed from the standpoint of Defendants at the time of

the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs and others. Defendants' had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs and others.

XI. DAMAGES

Plaintiffs incorporate the preceding paragraphs as if fully set forth herein. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs suffered substantial damages, including the following:

- a. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiffs for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Dallas County, Texas;
- b. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- c. Physical pain and suffering in the past;
- d. Physical pain and suffering in the future;
- e. Physical impairment in the past;
- f. Loss of future earning capacity;
- g. Loss of Consortium in the past, including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations;

- h. Loss of Consortium in the future including damages to the family relationship, loss of care, comfort, solace, companionship, protection, services, and/or physical relations;
- i. Loss of Parental Consortium in the past, including damages to the parent child relationship, including loss of care, comfort, solace, companionship, protection, services, and/or parental love;
- j. Loss of Household Services in the past;
- k. Loss of Household Services in the future;
- l. Disfigurement in the past;
- m. Mental anguish in the past;
- n. Mental anguish in the future.

To limit what a jury can ultimately award to Plaintiffs, Defendants have requested the court demand that Plaintiffs amend their pleading and state an absolute maximum amount of damages sought in this case, even though Plaintiffs believes that such an act impermissibly invades the province of the jury and that in making this demand, Defendants are suggesting that jurors are unable to carry out their constitutional duty to decide this case based upon the facts and arrive at a full and fair measure of damages suffered by Plaintiffs. Plaintiffs will comply with Defendants' demand and so that no unwarranted restrictions are placed on the jury's ability to fairly decide the case, and in light of the recent trend of juries to awards for compensatory damages in cases of this nature, Plaintiffs plead in response to Defendants' demand that his actual damages do not exceed \$10,000,000.00.

Furthermore, the law affords an award of punitive damages as the sole vehicle for the civil punishment of a company. In other words, in this context, the law recognizes that it is

impossible to put a company in jail; consequently, the law provides punitive damages to punish a company in certain situations. In this regard, Plaintiffs acknowledge that it is the jury's responsibility to take part in the process by which corporations may be punished, and that in doing so, the jury is called upon to consider not only the egregious nature of Defendants' conduct, but the effect which an award of punitive damages will likely have upon these particular Defendants.

If it is shown that Defendants was grossly negligent, and the jury decides that this is wrong and it ought to be stopped and people ought to be protected, Defendants ought to be punished with an award of punitive damages large enough that Defendants is held up as an example to influence other companies not to be grossly negligent in providing a safe workplace for their employees. Although believing that an award of punitive damages is entirely within the province of the jury, but being forced to comply with Defendants' request that Plaintiffs plead a maximum amount of punitive damages and consistent with the goal of not placing any unwarranted restrictions on the jury's ability to fairly decide the case, and based on recent jury verdicts for punitive damages involving companies that appear to be comparable to Defendants, Plaintiffs plead that the maximum amount of punitive damages sought by Plaintiff is \$30,000,000.00, an amount likely commensurate with Defendant's profit.

Such amount is pled by Plaintiffs due to the egregious nature of Defendants' conduct, Defendants' willful disregard for the life of Chashawna Blevins, Burnett McKinney III and Tre'Vion McKinney and Defendants' substantial financial wealth, inasmuch as the jury is asked to consider that an award of especially significant damages will have a negative economic effect on Defendants' business which would, in turn, have the positive effect of deterring Defendants and others like Defendants from operating their financially successful business at the expense of

the lives of their employees.

Furthermore, because Defendants' conduct (through its employee, Robbie Thompson) constitutes a felony under § 22.02 of the TEX. PENAL CODE, as set forth more particularly hereinabove, Plaintiff is entitled to an award of exemplary damages which is not subject to limitation under § 41.008(b) of the TEX. CIV. PRAC. & REM. CODE, pursuant to § 41.008(c)(4) of the TEX. CIV. PRAC. & REM. CODE.

XII. JURY DEMAND

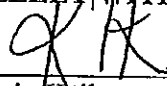
Plaintiffs demand that all issues of fact in this case be tried to a properly impaneled jury.

XIII. REQUESTS FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, all parties named herein as Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2(a)-(k).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiffs against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendants per Section 41.006, Chapter 41, TEX. CIV. PRAC. & REM. CODE, excluding interest, and as allowed by Sec. 41.008, Chapter 41, TEX. CIV. PRAC. & REM. CODE, together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiffs may be entitled at law or in equity.

Respectfully submitted,
KELLEY|WITHERSPOON, LLP



Kevin Kelley
State Bar No. 24038993
Nuru Witherspoon
State Bar No. 24039244
Erin N. Anderson
State Bar No. 24040431
2614 Main
Dallas, Texas 75226
(972) 850-0500
(972) 850-0400 Telecopier

ATTORNEYS FOR PLAINTIFFS

STATE OF TEXAS
COUNTY OF DALLAS
I, _____, Clerk of the County of Dallas, Texas, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Dallas, Texas.
WITNESS my hand and the seal of the County of Dallas, Texas, this _____ day of _____, 2010.
CLERK OF COUNTY
DALLAS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF DALLAS }

I, GARY FITZSIMMONS, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears of record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 18 day of May, A.D., 2010.

GARY FITZSIMMONS, DISTRICT CLERK
DALLAS COUNTY, TEXAS

By Kelly Kaluor Deputy

B



DALLAS COUNTY CIVIL DISTRICT COURT COVER SHEET

STYLED THE ESTATE OF BURNETT MCKINNEY, JR. ET AL v. DYNAMIC ENVIRONMENTAL SERVICES ET AL

This Civil Cover Sheet must be completed, filed and served with every petition. The information should be the best available at the time of filing, understanding that the information may change before trial. This information does not constitute a discovery request, response, or supplementation, and is not admissible at trial. Check (✓) all applicable boxes.

Plaintiff(s) Burnett McKinney, Jr. et al <input type="checkbox"/> Pro Se _____ Address _____ Telephone/Fax _____ E-mail _____ <input checked="" type="checkbox"/> Attorney for Plaintiff(s) Kevin Kelley State Bar No. 24038993 Address 26 14 Main Street, Dallas Texas 75226 Telephone/Fax 972.850.0500 E-mail _____	Defendant(s) (list separately) Dynamic Environmental Services, Et Al _____ _____ _____ _____ _____ _____ _____
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PARTIES MUST CHECK ONE CASE TYPE AND MAY CHECK ONE SUB-TOPIC

<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Code Violations <input type="checkbox"/> Condemnation <input type="checkbox"/> Construction <input type="checkbox"/> Construction <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Defamation <input type="checkbox"/> Other Commercial Dispute <input type="checkbox"/> Antitrust/Unfair Comp <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Franchise <input type="checkbox"/> Fraud/Misrep <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Non-Competes <input type="checkbox"/> Partnership <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other Commercial <input type="checkbox"/> Discipline <input type="checkbox"/> Discovery <input type="checkbox"/> Rule 202 Depositions <input type="checkbox"/> Commissions <input type="checkbox"/> Subpoena <input type="checkbox"/> Letters Rogatory <input type="checkbox"/> Other Discovery <input type="checkbox"/> Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation	<input type="checkbox"/> Termination <input type="checkbox"/> Other Employment <input type="checkbox"/> Foreclosure <input type="checkbox"/> R 736 <input type="checkbox"/> Other than R 736 <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Insurance <input checked="" type="checkbox"/> Mass Tort/MDL/Rule 11 <input type="checkbox"/> Asbestos <input type="checkbox"/> Baycol <input type="checkbox"/> Breast Implant <input type="checkbox"/> Firestone <input type="checkbox"/> Phen-Fen <input type="checkbox"/> Silica <input type="checkbox"/> Other Multi-Party <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Other Personal Injury <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Product <input type="checkbox"/> Premises <input type="checkbox"/> Other Personal Injury <input type="checkbox"/> Name Change <input type="checkbox"/> Post-Judgment <input type="checkbox"/> Professional Liability <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Med/Mal <input type="checkbox"/> Other Prof. Liab. <input type="checkbox"/> Property	<input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass/Try Title <input type="checkbox"/> Other Property <input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Tax Land Bank <input type="checkbox"/> Tax Personal <input type="checkbox"/> Tax Real <input type="checkbox"/> Workers Comp <input type="checkbox"/> Other ADDITIONAL SUB-TOPICS <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Discovery <input type="checkbox"/> Class Action <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Severance <input type="checkbox"/> TRO/Injunction <input type="checkbox"/> Turnover
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DISCOVERY LEVEL

Level 1

Level 2

Level 3

Local Rule 1.08 Certification (Must be completed and signed)

This case is not subject to transfer pursuant to Local Rule 1.07, or

This case is related to another case filed or disposed of in Dallas County:

Court: _____ Style: _____ Case No. _____

 Kevin Kelley
 Attorney's Signature

STATE OF TEXAS }
COUNTY OF DALLAS }

I, GARY FITZSIMMONS, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears of record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 18 day of May, A.D., 2010.

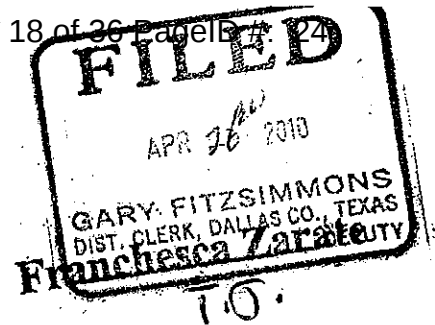
GARY FITZSIMMONS, DISTRICT CLERK
DALLAS COUNTY, TEXAS

By A. Elizabeth McElreath Deputy

C



GARY FITZSIMMONS
DALLAS COUNTY DISTRICT CLERK



CAUSE NO. DC10-4917-F

Burnett McKinney Jr
PLAINTIFF

*
*
*

IN THE DISTRICT COURT

162 JUDICIAL DISTRICT

VS

DALLAS COUNTY, TEXAS

Dynamic Environment
DEFENDANT

ENTER DEMAND FOR JURY

JURY FEE PAID BY:

PLAINTIFF / DEFENDANT

FEE PAID: \$30.00

RECORDED IN VOLUME J26 PAGE 235

STATE OF TEXAS }
COUNTY OF DALLAS }

I, GARY FITZSIMMONS, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears of record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 10 day of May, A.D., 2010.

GARY FITZSIMMONS, DISTRICT CLERK
DALLAS COUNTY, TEXAS

By Kelly Adams Deputy

D

CAUSE NO. DC-10-04917-I

FILED

BURNETT MCKINNEY, JR. AND
ALEXANDRIA MCKINNEY, BOTH
INDIVIDUALLY AND ON BEHALF OF
THE ESTATE OF BURNETT
MCKINNEY, III; BYRON FULLER
AND ALEXANDRIA MCKINNEY,
BOTH INDIVIDUALLY AND ON
BEHALF OF THE ESTATE OF
TREVION MCKINNEY; AND SASHA
ANDERSON AND LEE BLEVINS,
BOTH INDIVIDUALLY AND ON
BEHALF OF THE ESTATE OF
CHASHAWNA BLEVINS

Plaintiffs

v.

DYNAMIC ENVIRONMENTAL
SERVICES, LLC.;
ROBBIE THOMPSON; AND
CHASHAWNA BLEVINS

Defendants.

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

162ND JUDICIAL DISTRICT

**DEFENDANTS DYNAMIC ENVIRONMENTAL SERVICES, LLC AND
ROBBIE THOMPSON'S MOTION TO TRANSFER VENUE AND
ORIGINAL ANSWER TO PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Dynamic Environmental Services, LLC and Robbie Thompson, Defendants in the above-entitled and numbered cause, and files this their Motion to Transfer Venue and Original Answer to Plaintiff's Original Petition, and would respectfully show the Court as follows:

I.
MOTION TO TRANSFER VENUE

1. Defendants deny that venue is proper in Dallas County. Specifically, venue is proper in Smith County because all or a substantial portion of the events giving rise to Plaintiffs' claims occurred in Smith County. (Plaintiffs' Original Petition at 3). *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

2. Defendants specifically deny that venue is proper in Dallas County because Chashawna Blevins ("Blevins") is a "Plaintiff and co-defendant," "was a resident of Dallas County, Texas," or that her "interests reside in Dallas County, Texas." Defendants deny that Blevins is a Plaintiff. Further, Blevins is deceased. (Plaintiffs' Original Petition at 2, 4). A deceased person is neither a proper defendant nor a proper plaintiff because a deceased person cannot sue or be sued. Thus, Defendants also deny that Blevins is a co-defendant. Finally, the venue statute deals with parties, not interests. Accordingly, Dallas County is not a proper county of venue.

3. Defendants Dynamic Environmental Services, LLC and Robbie Thompson do not reside in Dallas County, Texas and are not Texas residents. Thus, subsections 15.002(a)(2) and (3) do not apply.

4. Even if one or more of the Plaintiffs reside in Dallas County, venue is proper based on a plaintiffs' residence only if one of the other general venue provisions does not apply. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(4).

5. Here, the general provision in section 15.002(a)(1) is clearly applicable under the facts as alleged in Plaintiffs' pleading. Consequently, Smith County is the county of proper venue. Accordingly, the Court should transfer the case to Smith County, Texas.

II.
GENERAL DENIAL

6. Subject to their motion to transfer venue, Defendants generally deny the allegations contained in Plaintiffs' Original Petition, including all amendments or supplements thereto, and demand strict proof thereof pursuant to the Texas Rules of Civil Procedure.

III.
AFFIRMATIVE DEFENSES,
INFERENTIAL REBUTTALS, AND OTHER DEFENSIVE MATTERS

7. Defendants deny that it failed to act reasonably, failed to act in good faith, or failed to act with all due care at any time relevant to this action.

8. Defendants deny that any breach of legal duty by act, omission, or otherwise, was the proximate, producing, or legal cause of any injury to Plaintiffs.

9. The injuries and damages sustained by Plaintiffs, if any, were proximately caused by the unforeseeable, superseding, and intervening acts and/or omissions of parties over whom Defendants had no supervision or control. As such, the proportionate responsibility of these parties should be submitted to the trier of fact in accordance with the provisions of Chapter 32 and/or Chapter 33 of the Texas Civil Practice and Remedies Code.

10. Defendants assert the affirmative defense of contributory negligence against Blevins and would show that Blevins failed to use that degree of care and caution which would have been used by persons of ordinary prudence under the same or similar circumstances. These actions and failures constitute negligence and were a proximate cause, or even the sole proximate cause, of the incident in question and Plaintiffs' alleged damages.

11. Plaintiffs' recovery must be offset by any amounts received from joint tort-feasors and/or other defendants. Defendants pray for all credit and/or offset rights at law by virtue of any settlement entered into by Plaintiffs with any party or non-party, in connection with or

relating to any matter pertaining to the claim or claims made herein by Plaintiffs. Defendants invoke all rights under law, including, but not limited to, any above-mentioned rights set forth in Chapter 32 and/or Chapter 33 of the Texas Civil Practice and Remedies Code.

12. Plaintiffs' alleged damages should be proportionately reduced or barred to the extent of Plaintiffs' failure to mitigate damages.

13. Plaintiffs' alleged injuries, damages or liabilities complained of herein are the result of an unavoidable accident.

14. Defendants assert that the imposition of punitive damages against Defendant in this case would violate its constitutional rights under the federal and Texas constitutions, to wit:

a. Texas law provides inadequate and insufficient procedural safeguards and standards for the imposition of punitive damages, violating Defendants' due process rights;

b. An award of punitive damages against Defendants would violate their right to freedom from excessive fines and from cruel and unusual punishment;

c. An award of punitive damages, being essentially criminal in nature, would violate Defendants' right not to be compelled to be witnesses against themselves and their right to have liability imposed only upon proof beyond a reasonable doubt;

d. Texas law governing the imposition of punitive damages is unconstitutionally vague and ambiguous and fails to give Defendants adequate notice of the elements of the offense for which punitive damages may be assessed;

e. Introduction of evidence of Defendants' net worth or income would be so prejudicial and inflammatory as to violate Defendants' rights to a fair trial and to due process;

f. An award of punitive damages would violate equal protection, in that the law permits different awards against defendant who have committed similar offenses and who differ only in material wealth, thus constituting arbitrary, invidious, and unconstitutional discrimination;

g. An award of punitive damages would be an unconstitutional burden on interstate commerce.

15. Defendants plead they cannot be held to answer for punitive or exemplary damages for acts or omissions of any employer or agent.

16. Defendants assert the punitive damages cap, pre-judgment interest limitation and all other procedural protections afforded to it by Chapter 41 of the Texas Civil Practice & Remedies Code.

17. Defendants would show that any award of pre-judgment interest on future damages would deprive Defendants of their property and rights without due process and course of law, and would further constitute an excessive and unreasonable fine or penalty prohibited by the Texas and United States Constitutions. Any claims for pre-judgment interest is limited by the dates and amounts as set forth in Chapter 304 of the Texas Finance Code and/or Chapter 41 of the Texas Civil Practice and Remedies Code.

18. Defendant asserts all of the foregoing denials, defenses, and other defensive matters against all parties asserting any claims, including cross-claims, counterclaims, third-party claims, or any other claims against Defendants.

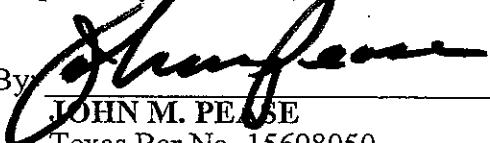
IV. CLAIM FOR CONTRIBUTION

19. Defendants deny that Plaintiffs are in any way entitled to recover damages from Defendants. In the unlikely event liability is found against Defendant, however, Defendants seek contribution under Chapter 33 from any co-defendant or responsible third party whose negligence were a proximate, producing, sole proximate, and/or sole producing cause of Plaintiffs' alleged injuries and damages in this matter.

V.
PRAYER

20. **WHEREFORE, PREMISES CONSIDERED,** Dynamic Environmental Services, LLC and Robbie Thompson respectfully request the Court grant their motion to transfer venue and transfer this case to Smith County, Texas, and that upon final hearing hereof, Plaintiffs take nothing by this suit, that Defendants recover their costs, and that Defendants have such other and further relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

By 
JOHN M. PEASE
Texas Bar No. 15698050

BYRON K. HENRY
Texas Bar No. 24008909

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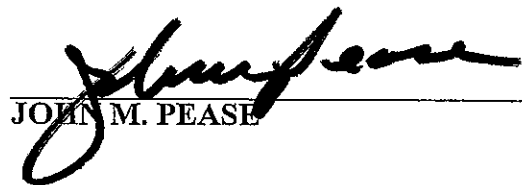
ATTORNEYS FOR DEFENDANTS,
DYNAMIC ENVIRONMENTAL
SERVICES, LLC AND ROBBIE
THOMPSON

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2010, a true and correct copy of the foregoing document was delivered to the counsel of record as listed below.

Via Telecopier

Kevin Kelley, Esq.
Nuru Witherspoon, Esq.
Erin N. Anderson, Esq.
Kelley Witherspoon, LLP
2614 Main
Dallas, Texas 75226
Counsel for Plaintiffs


JOHN M. PEASE

E

No.

ATTORNEYS



10070004491438

PLCNSL
2614 Main St
Dallas TX 75226
(972) 850-0500
Fax 0400

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ORDERS

[illegible]

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Burnett McKinney, Jr., et al.	DEFENDANTS Dynamic Environmental Services, LLC, Robbie Thompson and Chashawna Blevins
(b) County of Residence of First Listed Plaintiff <u>Dallas County, Texas</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Kevin Kelly, Nuru Witherspoon, Erin N. Anderson, Kelly Witherspoon, LLP, 2614 Main Street, Dallas, TX 75225, (972) 850-0500	Attorneys (If Known) John M. Pease, Byron K. Henry, Cowles & Thompson, P.C., 901 Main Street, Suite 3900, Dallas, TX 75202, (214) 672-2000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <table style="width:100%;"> <tr> <td><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> </tr> </table>	<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width:100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)																												
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																								
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																								

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> CONTRACT	<input type="checkbox"/> TORTS	<input type="checkbox"/> FORFEITURE/PENALTY	<input type="checkbox"/> BANKRUPTCY	<input type="checkbox"/> OTHER/STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)							
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC 1332 (Diversity) Tex.Civ.Prac. Code § 71.001 et seq. (survival and wrongful death)</u> Brief description of cause: <u>wrongful death and survival actions resulting from motor vehicle accident</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>10,000,000.00</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) (See instructions) PENDING OR CLOSED:	JUDGE _____ DOCKET NUMBER _____
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DATE <u>5/19/2010</u>	SIGNATURE OF ATTORNEY OF RECORD 	JUDGE _____
FOR OFFICE USE ONLY		

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**United States District Court
Northern District of Texas**

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
162 nd District Court, Dallas County, Texas	Cause No. DC-10-04917-I

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

<u>Party and Party Type</u>	<u>Attorney(s)</u>
------------------------------------	---------------------------

Burnett McKinney, Jr. and Alexandria McKinney, both Individually and on behalf of The Estate of Burnett McKinney, III	Plaintiffs	Kevin Kelly State Bar No. 24038993 Nuru Witherspoon State Bar No. 24039244 Erin N. Anderson State Bar No. 24040431 Kelley Witherspoon, LLP 2614 Main Street Dallas, TX 75226 (972) 850-0500
Byron Fuller and Alexandria McKinney, both Individually and on behalf of The Estate of Trevion McKinney	Plaintiffs	Kevin Kelly State Bar No. 24038993 Nuru Witherspoon State Bar No. 24039244 Erin N. Anderson State Bar No. 24040431 Kelley Witherspoon, LLP

Supplemental Civil Coversheet**Page 2**

		2614 Main Street Dallas, TX 75226 (972) 850-0500
Sasha Anderson and Lee Blevins, both Individually and on behalf of The Estate of Chashawna Blevins	Plaintiffs	Kevin Kelly State Bar No. 24038993 Nuru Witherspoon State Bar No. 24039244 Erin N. Anderson State Bar No. 24040431 Kelley Witherspoon, LLP 2614 Main Street Dallas, TX 75226 (972) 850-0500
Dynamic Environmental Services, LLC	Defendant	John M. Pease State Bar No. 15698050 Byron K. Henry State Bar No. 24008909 Cowles & Thompson, P.C. 901 Main Street, Suite 3900 Dallas, TX 75202 (214) 672-2000
Robbie Thompson	Defendant	John M. Pease State Bar No. 15698050 Byron K. Henry State Bar No. 24008909 Cowles & Thompson, P.C. 901 Main Street, Suite 3900 Dallas, TX 75202 (214) 672-2000
Chashawna Blevins	Defendant	

3. Jury Demand:

Was a Jury Demand made in State Court?

X Yes No

If "Yes," by which party and on what date?

Plaintiffs
 Party

April 23, 2010
 Date

Supplemental Civil Coversheet

Page 3

4. Answer:

Was an Answer made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

Dynamic Enviromental Services, LLC

and Robbie Thompson

Party

May 17, 2010

Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

N/A

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

N/A

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Claim(s)

Plaintiffs

Negligence

Gross Negligence

Negligent Entrustment